Co., 158 Fed. 941. A transfer of personalty for other personalty than money may not constitute a sale for every purpose. See *Thornton* v. *Moody*, 24 S. W. 331, 333 (Tex.). But the sort of transaction indulged in by the defendant in the principal case falls within the intended prohibition of the local option laws, and the decision seems correct.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — SIGNED BY DEFENDANT ONLY. — The memorandum of a contract for the sale of grain was signed by the vendor, but not by the vendee, who seeks to enforce it. The Idaho statute of frauds provides that such an "agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent." REV. CODES, IDA., § 6009. *Held*, that the plaintiff, not having signed himself, may not recover. *Kerr* v. *Finch*, 135 Pac. 1165 (Ida.).

Both this decision and the one it follows are admittedly against the great weight of authority. *Kerr* v. *Finch*, *supra*, 1165; *Houser* v. *Hobart*, 22 Ida. 735, 127 Pac. 997. The provision in question is practically § 17 of the Statute of Frauds (St. 29 Car. II, c. 3). The same question arises where it is sought to charge a vendee when he but not the vendor has signed. *Old Colony R. Corp.* v. *Evans*, 6 Gray (Mass.) 25; *Mason* v. *Decker*, 72 N. Y. 595; so too where the subject matter is realty. *Hodges* v. *Kowing*, 58 Conn. 12, 18 Atl. 979; *Richards* v. *Green*, 23 N. J. Eq. 536. The overwhelming majority of cases construes the "party charged" to mean the one sued on the agreement. *Schneider* v. *Norris*, 2 M. & S. 286; *Bristol* v. *Mente*, 79 N. Y. App. Div. 67, affirmed 178 N. Y. 599; *Morrison* v. *Browne*, 191 Mass. 65, 77 N. E. 527; *Harper* v. *Goldschmidt*, 156 Cal. 245, 104 Pac. 451. Idaho and Michigan, however, find a fatal want of mutuality under these circumstances. *Houser* v. *Hobart*, *supra*; *Wilkinson* v. *Heavenrich*, 58 Mich. 574, 26 N. W. 139. This view patently overlooks the fact that the statute concerns the proof, and not the existence, of the bargain, for the memorandum does not constitute the contract, but only evidences it. *Thayer* v. *Luce*, 22 Oh. St. 62; *Charlton* v. *Columbia Real Estate Co.*, 67 N. J. Eq. 629, 60 Atl. 192. The court here, indeed, asserts that the local statute has changed the substantive law in this respect also. But it is submitted that the use by the legislature of words already construed almost everywhere to have a certain meaning, shows an intent to use the words in that sense. *Ryalls* v. *Mechanics' Mills*, 150 Mass. 190, 22 N. E. 766. See *Rhoads* v. *Chicago & Alton R. Co.*, 227 Ill. 328, 334, 81 N. E. 371, 373. The court's argument, that it is unjust to allow the holder of a signed memorandum to insist on or deny the contract as he chooses, should be addressed rather to the legislature.

TENANCY IN COMMON — CO-TENANT'S LIEN INFERIOR TO A PRIOR MORTGAGE LIEN. — Prior to a partition suit by one tenant in common the other co-tenant mortgaged his undivided share. *Held*, that the mortgagee's lien on this undivided share of the land was superior to the co-tenant's lien on that share for his portion of the rents and profits collected. *Knecht* v. *Knecht*, 58 Oh. L. Bull. 680.

A tenant in common holds the legal title to an undivided share of the property. See 1 TIFFANY, REAL PROPERTY, § 163. Consequently a mortgage by one will attach only to the mortgagor's undivided share. See *Bigelow* v. *Topliff*, 25 Vt. 273, 286. It is unsettled whether one co-tenant has a lien for rents and profits on the other co-tenant's share of the land. Some courts deny any lien whatsoever. *Vaughan* v. *Langford*, 81 S. C. 282, 62 S. W. 316; see cases collected in 17 AM. & ENG. ENCYC. 697. But, on the other hand, a few jurisdictions do recognize an equitable lien. *Hannan* v. *Osborn*, 4 Paige (N. Y.) 336; *Beck* v. *Kallmeyer*, 42 Mo. App. 563; *Arnett* v. *Munnerlyn*,